

Bill No. 37-01
Concerning: Board of Appeals -
Technical Corrections
Revised: 11-27-01 Draft No. 2
Introduced: November 6, 2001
Enacted: November 27, 2001
Executive: December 6, 2001
Effective: March 7, 2002
Sunset Date: None
Ch. 30, Laws of Mont. Co. 2001

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President

AN ACT to correct technical and codification errors in, and make stylistic and conforming amendments to, County law regarding the jurisdiction and procedures of the Board of Appeals.

By amending

Montgomery County Code
Chapter 2, Administration
Sections 2-112, 2-113, 2-113A, and 2-140

Chapter 8, Buildings
Section 8-23

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 2-112, 2-113, 2-113A, 2-140, and 8-23 are amended as**
2 **follows:**

3 **2-112. [Duties and powers.] Jurisdiction.**

4 [(a) The County Board of Appeals has the following duties and powers:

- 5 (1) Functions of board of zoning appeals. The board shall have and
6 exercise the functions and powers of the board of zoning appeals
7 of the regional district in Montgomery County as such functions
8 and powers are prescribed in the Maryland-Washington Regional
9 District Act, enacted by chapter 992 of the Laws of Maryland,
10 1943, and any amendments thereto, and all references in the
11 regional district act and zoning ordinance to the Board of Zoning
12 Appeals shall be construed to refer to the Board created by this
13 Article. Upon the effective date of this Article, the Board of
14 Zoning Appeals shall cease to exist.
- 15 (2) Petitions for special exceptions. The Board shall decide all
16 petitions for special exceptions, except as otherwise provided in
17 Chapter 59 of this Code.
- 18 (3) Hearing under building code. The Board hears and decides all
19 appeals taken from a decision made by the Department of
20 Permitting Services under the County building code. An appeal
21 must be filed with the Board within 30 days after the decision of
22 the Department of Permitting Services.
- 23 (4) Appeals concerning licenses for hospitals, sanitariums, nursing
24 homes and care homes. The Board shall hear and decide all
25 appeals taken pursuant to Section 25- 23, and all references
26 therein to the Council shall be construed to refer to the Board.

- (5) Appeals concerning licenses for private educational institutions. The Board shall hear and decide all appeals taken pursuant to Section 44-25, and all references therein to the Council shall be construed to refer to the Board.
- (6) Appeals from orders directing the removal of garbage, ashes, rubbish and weeds. The Board shall hear and decide all appeals taken pursuant to Section 48- 28, and all references therein to the Council shall be construed to refer to the Board.
- (7) Appeals from orders directing removal of diseased trees. The Board shall hear and decide all appeals taken pursuant to Sections 18-4 to 18-10, and all references therein to the Council shall be construed to refer to the Board.
- (8) Appeals from orders directing removal of obstructions to vision along highways. The Board shall hear and decide all appeals taken pursuant to Section 49-16, and all references therein to the Council shall be construed to refer to the Board.
- (9) Appeals from orders concerning restaurant permits. The Board shall hear and decide all appeals taken pursuant to Section 15-18 and all references therein to the Council shall be construed to refer to the Board.
- (10) Appeals concerning individual water supply and sewage disposal systems. The Board shall hear and decide all appeals taken under Chapter 27A.
- (11) Appeals from orders regarding uninhabitable or dangerous buildings. The Board shall hear and decide all appeals taken under Chapter 55 of this Code, and all references therein to the Council shall be construed to refer to the Board.

- (12) Appeals concerning licenses for riding schools and stables. The Board shall hear and decide all appeals taken under the ordinance licensing and regulating riding schools and stables, the same being Ordinance No. 2-75, adopted by the Council on December 23, 1952; and all references therein to the Council shall be construed to refer to the Board.
- (13) Appeals concerning licenses for child care homes. The Board shall hear and decide all appeals taken under the ordinance licensing and regulating child care homes, the same being Ordinance No. 2-132, adopted by the Council on January 19, 1954; and all references therein to the Council shall be construed to refer to the Board.
- (14) Appeals concerning licenses for places of amusement and amusement enterprises. The Board shall hear and decide all appeals taken under any ordinances licensing and regulating places of amusement and amusement enterprises, and all references in such ordinances to the County Council shall be construed to refer to the Board.
- (15) Appeals concerning the hotel license law. The Board shall hear and decide all appeals taken under the hotel licensing law, being Ordinance No. 3-41, adopted August 16, 1955; and all references therein to the County Council as an appeal body shall be construed to refer to the Board.
- (16) Appeals concerning the plumbers and gas fitters license law and the plumbing and gas fitting code. The Board shall hear and decide all appeals taken under the plumbers and gas fitters licensing law and the plumbing and gas fitting code, and all

references therein to the County Council as an appeal body shall be construed to refer to the Board.

(17) Appeals concerning the electrical contractors license law. The Board shall hear and decide all appeals taken under the electrical contractors licensing law and all references therein to the County Council as an appeal body shall be construed to refer to the Board.

(18) Appeals concerning rent supplement and assistance program law. The Board shall hear and decide all appeals pursuant to Chapter 41A of this Code. No filing fee shall be required for appeals under this subsection. Appellants under this subsection shall be granted emergency hearings pursuant to Section 2A-9 of this Code.

(19) Appeals governing mobile home parks. The Board must hear and decide all appeals taken under Chapter 29, Article VII, "Property Standards for Mobile Home Parks."

(20) Appeals concerning agricultural land preservation. The Board hears and decides all appeals taken under Section 2B-4.

(21) Appeals concerning air quality control. The Board hears and decides all appeals taken under Section 3-16.

(22) Appeals from orders concerning fire safety. The Board hears and decides all appeals taken under Section 22-21.

(23) Appeals concerning deficiency correction orders issued to group residential facilities. The Board hears and decides all appeals taken under Section 23A-9(c)(2).

(24) Appeals concerning historic area work permits. The Board hears and decides all appeals taken under Section 24A-7.

- (25) Appeals concerning building or occupancy permits related to moderately-priced dwelling units. The Board hears and decides all appeals taken under Section 25A-11 regarding the denial, suspension, or revocation of a building or occupancy permit to a moderately-priced dwelling unit.
- (26) Appeals concerning massage establishment licenses, and registration of massage practitioners and technicians. The Board hears and decides all appeals taken under Section 24-11.
- (27) Appeals concerning rat control. The Board hears and decides all appeals taken under Section 39-4.
- (28) Appeals concerning commercial campgrounds. The Board hears and decides all appeals taken under Section 41-16.
- (29) Appeals concerning inspection of slaughterhouses. The Board hears and decides all appeals taken under Section 46-6.
- (30) Appeals concerning vendor's licenses. The Board hears and decides all appeals taken under Section 47-7.
- (31) Appeals concerning permits for grading and construction of roads, sidewalks, and curbs. The Board hears and decides all appeals taken under Section 49-39A.
- (32) Appeals concerning swimming pool licenses, permits, and registrations. The Board hears and decides all appeals taken under Section 51-13.
- (33) Appeals concerning tanning facilities. The Board hears and decides all appeals taken under Section 51A-10.
- (34) Appeals concerning denial, revocation, or suspension of a license for a transient lodging facility. The Board hears and decides all appeals taken under Section 54-27.

(35) Appeals from orders involving weed removal. The Board hears and decides all appeals taken under Section 58-6.

(36) Appeals concerning violation of housing and building maintenance standards. The Board hears and decides all appeals taken under Section 26-14.

(37) Other appeals. The Board hears and decides other appeals to the extent authorized by law.]

[(b) The Board may, by vote of 3 members, refer any matter pending before it, to be heard by a hearing examiner in the Office of Zoning and Administrative Hearings under the rules of procedure of that Office. The hearing examiner must submit a written report and recommendation to the Board for the Board's final decision.]

(a) The County Board of Appeals must exercise all functions of a Board of Zoning Appeals. Any reference to a Board of Zoning Appeals for the County in state or County law means the County Board of Appeals.

(b) The Board must hear and decide each application for a special exception, unless Chapter 59 directs otherwise.

(c) The Board has the following appellate jurisdiction.

<u>The board must hear and decide each appeal taken under:</u>	<u>Those appeals involve:</u>
<u>Section 2B-4</u>	<u>Agricultural land preservation</u>
<u>Section 3-16</u>	<u>Air quality control</u>
<u>Section 4-13</u>	<u>Licenses for places of amusement</u>
<u>Section 8-23</u>	<u>County building code</u>
<u>Section 15-18</u>	<u>Food service facility licenses</u>

<u>Section 17-28</u>	<u>Electricians and electrical contractors licenses</u>
<u>Section 18-7</u>	<u>Removal of diseased trees</u>
<u>Section 22-21</u>	<u>Fire safety orders</u>
<u>Section 23A-11</u>	<u>Group home licenses and deficiency orders</u>
<u>Section 24A-7</u>	<u>Historic area work permits</u>
<u>Section 25-23</u>	<u>Licenses for hospitals, sanitariums, nursing homes, and care homes</u>
<u>Section 26-14</u>	<u>Housing and building maintenance standards</u>
<u>Chapter 27A</u>	<u>Individual water supply and sewage disposal systems</u>
<u>Section 29-77</u>	<u>Mobile home parks</u>
<u>Section 39-4</u>	<u>Rat control</u>
<u>Section 41-16</u>	<u>Commercial campgrounds</u>
<u>Section 44-25</u>	<u>Licenses for private educational institutions</u>
<u>Section 46-6</u>	<u>Slaughterhouses</u>
<u>Section 47-7</u>	<u>Vendors' licenses</u>
<u>Section 48-28</u>	<u>Removal of solid waste and weeds</u>
<u>Section 49-16</u>	<u>Removal of obstructions to vision along highways</u>
<u>Section 49-39A</u>	<u>Grading and construction of roads, sidewalks, and curbs</u>
<u>Section 51-13</u>	<u>Swimming pool licenses, permits, and registration</u>
<u>Section 51A-10</u>	<u>Tanning facilities</u>
<u>Section 54-27</u>	<u>Transient lodging facilities</u>
<u>Section 55-2</u>	<u>Dangerous buildings</u>
<u>Section 58-6</u>	<u>Weed removal</u>

Chapter 59	Special exceptions decided by Hearing Examiner
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(d) The Board must hear and decide any other appeal authorized by law.

(e) Any reference to the County Council as hearing an appeal in any chapter or section of the County Code listed in subsection (c) means the Board of Appeals.

2-113. Procedures.

(a) Subject to the approval of the Council, the Board may adopt rules of procedure to govern its proceedings. [The Board's rules of procedure do not apply to hearings held by the Hearing Examiner.] The Board's rules may govern filing fees, the conduct of meetings and hearings, and other procedures necessary to hear and decide cases. This Article and other laws, ordinances, rules, and regulations under which the Board exercises authority control in [case of] any conflict with any rule adopted by the Board[, except as otherwise provided in subsection 2-112(b)].

* * *

2-113A. [Decisions on recommendation of] Referrals to hearing examiner.

[(a) Any application, petition or order of appeal of those matters set forth in section 2-140(2)(c) of article X of this chapter or in chapter 59 of this Code, wherein a hearing is provided before the hearing examiner who shall thereafter submit a written report and recommendation to the county board of appeals for decisions on such matters, shall be decided on the basis of the evidence of record; provided, that any application, petition or appeal heard by a hearing examiner may be decided solely on the basis of the hearing examiner's report and recommendation.]

- (a) The Board may, by vote of 3 members, refer any matter pending before it to be heard by a hearing examiner in the Office of Zoning and Administrative Hearings. The Office must conduct the hearing under the Office's rules of procedure or, if the Office's rules do not apply to that type of hearing, the Board's rules of procedure. The hearing examiner must submit a written report and recommendation to the Board.
- (b) Within [ten (10)] 10 days after transmittal of the hearing examiner's report and recommendation, any person who, or association which, appeared and testified in person or by counsel at the hearing before the examiner may request, in writing, an opportunity to present oral argument [before] to the [board of appeals prior to its rendering of] Board before it issues a decision. [Such] Any request for oral argument must explicitly state the [matters desired] issues to be presented at the oral argument.[; and if] If oral argument is granted, the party [or parties] who sought the oral argument [shall] must be limited [at the argument] to the [presentation of the matters of record] issues stated in the request [or to such matters] and any other issue specified in the order [granting] allowing oral argument. The Board [of appeals] may, in its discretion, grant or deny [such] a request for oral argument.
- (c) [Thereafter, the board shall either] The Board must, after oral argument if argument is allowed:
- (1) decide the [application, as hereinafter provided,] matter on the basis of the evidence of record and the hearing examiner's report and recommendation, or

(2) remand the [application] matter to the hearing examiner for clarification or [the] taking [of] additional evidence, [if deemed] as appropriate.

- [(c) An application, petition or appeal which is the subject matter of the hearing examiner's report and recommendation shall either be approved or denied on the merits, approved with modifications, or denied for want of the necessary total affirmative votes, or dismissed, or remanded for a stated purpose or allowed to be withdrawn.]
- [(d) A decision of the board of appeals remanding to the hearing examiner, approving, approving with modifications, denying or dismissing any application, petition or appeal which is the subject matter of a report and recommendation of the examiner shall be rendered within thirty (30) days of the transmittal of the examiner's report and recommendation, unless such time is extended by the board. All quorum, voting and appeal requirements ordinarily applicable to proceedings before the board of appeals shall apply.]

2-140. Powers, duties and functions.

* * *

- (c) The Office may hear, and submit a written report and recommendation to the specified officer or body on, any:
- (1) petition to the County Council to grant, modify, or revoke a special exception, as provided in Chapter 59;
 - (2) designation by the County Council of a geographic area as a community redevelopment area; or
 - (3) matter referred by the Board of Appeals under Section [2-112(b)] 2-113A.

* * *

8-23. Board of appeals.

[(a) The county board of appeals, established by section 2-108 of this Code shall have full and exclusive authority to hear and decide all appeals taken from decisions of the department in the administration of this chapter. Any person aggrieved by the issuance, denial, renewal or revocation of a permit or any other decision or order of the department made hereunder may appeal to the county board of appeals, which after hearing upon notice shall have authority to affirm, modify or reverse the order or decision so made. Upon such appeals the board shall decide whether such decision or order was made in accordance with the provisions of this chapter and all other applicable federal, state and local laws and regulations.

(b) Appeals from decisions of the county board of appeals shall be in accordance with section 2-114 of this Code.]

(a) Any person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of the Department under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, or revoked, or the order or decision is issued.

(b) After notice and hearing, the Board may affirm, modify, or reverse the order or decision of the Department.

(c) Any party may appeal a decision of the Board to the Circuit Court under Section 2-114.

Approved:

/S/

November 29, 2001

Blair G. Ewing, President, County Council

Date

257 *Approved:*

258

259 /S/ December 6, 2001

Douglas M. Duncan, County Executive

Date

260 *This is a correct copy of Council action.*

261

262 /S/ December 10, 2001

Mary A. Edgar, CMC, Clerk of the Council

Date